

Testimony of the Michigan Chamber of Commerce
Before the House Tax Policy Committee
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Presented by
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Good morning Representatives, on behalf of the Michigan Chamber of Commerce thank you for the opportunity to provide comments in regards to this "Taxpayer Bill of Rights." I'm Tricia Kinley, Director of Tax Policy & Economic Development and I have as a guest with me today, Sue Kinney-Huffman with Quixtar out of Grand Rapids. Sue is a former Treasury auditor, consultant, and a current member of the Michigan Chamber's Tax Committee.

The Michigan Chamber supports this package of bills and we appreciate legislative efforts to focus on the more esoteric issue of Michigan's "tax environment" (i.e. tax administration, appeals processes, and communication with the Department.) We also commend the Detroit Regional Chamber's efforts to raise awareness about these important issues. They've done an outstanding job with the details of this package.

11 months of testimony about "tax restructuring" has provided a wide range of feedback about Michigan taxes. From the Michigan Chamber's perspective, we believe Michigan's overall tax burden is an obstacle to economic growth. Yet less talked about, is the fact that improving Michigan's "tax environment" could also foster economic growth by making it easier to do business in this state. These issues may not be as easy to quantify, but they still affect a company's bottom line (litigation costs, consultant costs, the "costs" of uncertainty about the system.) The job providers that we represent make a good faith effort to understand the statutes and comply accordingly. Yet in all due respect to our friends at the Michigan Department of Treasury, there is a sentiment among many job providers that Treasury changes the rules as they go along... costing taxpayers additional taxes in some form or another (unauthorized tax increases, litigation, unfair penalties.) They also believe there is no longer any sense of "fair play." A prime example of this are recently enacted unfair penalty and interest on personal property taxes. Following enactment of this legislation, Treasury informed taxpayers that the new penalties and interest would be applied retroactively. The vague legislative language also opened the door for Treasury to assess penalties on taxpayers...for example, even if an Assessor makes the mistake. Unfortunately the Governor vetoed a reasonable compromise to address this situation. While this outstanding problem is not addressed within this package, it provides a good example of why we'd hope you will support this package.

Rather than re-hash all of the bills that the Detroit Chamber has very thoughtfully describe, we would like to just briefly touch on a few specific bills.

HB 5355 & 5362 would inject sorely needed fairness into Michigan's tax system. HB 5355 would provide certainty about when a change in tax policy takes effect by prohibiting retroactive tax increases under most circumstances. HB 5362 codifies that taxpayers can rely on published opinions and letter rulings of the Department. Both are imperative concepts to a fair tax system, it actually seems rather unfortunate that it has come to the point that "fair treatment" has to be statutorily codified. But, two recent court cases help illustrate our point and support the argument that the legislature should demand through statute (if that is what it takes) that taxpayers be treated fairly.

In *International Home Foods, Inc. v Treasury*, the Court of Appeals held that "defendant [Treasury] may not retroactively apply a court decision favorable to [Treasury], to a tax year before the release of that decision if [Treasury] has in place an interpretive ruling favorable to the taxpayer's position." The Michigan Chamber believes this is a fair and appropriate conclusion.

Unfortunately, a separate Court of Appeals decision (*J.W. Hobbs Corporation v. Treasury*) failed to consider a key, prior court decision (*D'Amico vs. Treasury*) and concluded that Treasury was not bound to its own stated interpretations and could apply statutes retroactively. Needless to say we find this outcome appalling. The only silver lining was that the court agreed that Treasury's tactics are unfair, stating that "it is unfortunate that plaintiff and other similarly situated businesses are not able to trust the published bulletins of [Treasury.] [Treasury's] decision to retroactively apply the new standard has blindsided [Hobbs], who correctly complied with the previous taxing standard and planned its business accordingly." We urge you to support consistency and fair treatment for taxpayers by supporting both HB 5355 and HB 5362.

HB 5386 would prohibit Treasury from double collecting tax off of the same single transaction...sales tax from the seller, and then use tax from the purchaser. I'll turn it over to Sue, to give you some first-hand examples.

Thanks Sue. In addition, let me make a final point on this legislation. I'm sure you will recall that the tax cut/"restructuring" package was vetoed last week. The Governor said that two bills "created new tax loopholes for business" alluding to the very same change included in HB 5386. It is incredible to us that the Administration would characterize language to prohibit double taxation as a "loophole." We urge you to consider the rationale that we have presented and support HB 5386.

In summary, based on the examples we've given you today, we would ask you...is this the type of tax environment that you, as legislators, want for Michigan? Is this the type of system that creates trust...or creates hostility? This package presents an opportunity to vote in favor of streamlining tax administration, demanding consistency, and treating taxpayers fairly. It presents an opportunity to send a message to job providers that you are serious about improving Michigan's business climate

The Michigan Chamber is a statewide business organization which represents nearly 6,700 employers, trade associations and local chambers of commerce. The Michigan Chamber was established in 1959 to be an advocate for Michigan's job providers in the legislative, political and legal process.